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STATUS REPORT ON LAW OF THE SEA NEGOTIATIONS AFTER GENEVA

The following is based on a statement by Ambassador John R. Stevenson, Special Representative of the President for Law of the Sea Conference and U.S. Representative to the U.N. Conference on the Law of the Sea, before the Senate Foreign Relations Committee, Subcommittee on Oceans and International Environment.

Representatives to the second substantive session of the Third United Nations Conference on the Law of the Sea met in Geneva from March 17 to May 9, 1975. A third substantive session of 8 weeks is planned for New York in 1976 commencing on March 29. The Geneva conference recommended that the U.N. General Assembly provide for an additional substantive session in the summer of 1976 if the third session of the conference so decides.

The Geneva session concentrated on the conference's previously agreed upon work: the translation into specific treaty articles of the general outlines of agreement reached at the first substantive session in Caracas in 1974. Nevertheless, not as much progress was achieved as the U.S. delegation had hoped or as the pressures for prompt agreement on a new law of the sea demand.

In Caracas, the decision was made not to prolong general debate. This was respected to the point that formal plenary and committee sessions were largely devoted to organizational and procedural matters. The substantive work of this session was carried on in informal committee meetings, in working groups, and in private bilateral and multilateral consultations.

The official working groups were most effective in dealing with a number of articles that were relatively noncontroversial or of interest to only a limited number of countries. These included the articles dealing with the baselines from which the territorial area is to be measured; innocent passage in the territorial sea; high seas law; and pollution articles on monitoring, assessing environmental effects, and land-based sources of pollution of the seas.

In the areas of major controversies, the most effective negotiations and the drafting of compromise treaty articles took place in informal groups. One such group was headed by Norwegian Minister Without Portfolio Jens Evensen. This group of some 30-40 participants, principally heads of delegation, concentrated on the economic zone and pollution from seagoing vessels.

Another group, open to all conference participants, focused on the settlement of disputes. It was attended at one time or another by representatives from more than 60 countries. Yet another informal group was organized by representatives of the United Kingdom and Fiji to work out a set of articles on unimpeded transit through straits. They worked to find a middle ground between the free transit articles supported by many maritime countries and the innocent passage concept supported by a number of straits states.

In general, the principal substantive accomplishments of this session fall into two categories. The first is the large number of relatively noncontroversial treaty articles agreed to in the official working groups. The second includes the more controversial articles negotiated in the smaller unofficial groups which, while not as yet accepted by the conference as a whole, do represent, to a large degree, negotiated articles which accommodate the main trends at the conference.

The principal procedural achievement of the

Geneva session was the preparation of an informal single negotiating text covering virtually all the issues before the conference. This text was prepared by the chairmen of the three main committees pursuant to the decision of the plenary. The chairmen were asked to prepare a negotiating text as a procedural device to provide a basis for negotiations. The resulting single committee text provides a means for focusing the conference work in a way that should facilitate future negotiations.

The Geneva session provided clear evidence of a widespread desire to conclude a comprehensive treaty on the Law of the Sea. Unfortunately, the nature of the negotiations was not geared to immediately visible results and the public impressions may have been that little progress was made.

In fact, there were substantial achievements in some areas. Unfortunately, the work schedule outlined by the General Assembly for conclusion of the treaty in 1975 will not be met. The informal single texts and the provision for a second meeting in 1976, if the conference so decides, provide a procedural basis for concluding a treaty next year. It remains to be seen whether or not the will exists to reach pragmatic solutions where wide differences of view still exist.

Much common ground was found in the Geneva negotiations on navigation, fisheries, continental shelf resources, and marine pollution issues. Significant differences remain on the deep seabed regime and authority and, to a lesser degree, on scientific research and on the desires of landlocked and geographically disadvantaged states to participate in resources exploitation in the economic zone.

The juridical content of the 200-mile economic zone is probably the issue of the greatest interest to most countries.

The Evensen group made a considerable contribution to the single negotiating text by producing a chapter on the economic zone, including fisheries. These articles provide for comprehensive coastal state management jurisdiction over coastal fisheries stocks out to 200 miles. There is also a coastal state duty to conserve stocks and to fully utilize them by allowing access by foreign states to the catch in excess of the harvesting capacity of the individual coastal states. The articles on anadromous species (e.g., salmon) were largely acceptable to the states most affected. These articles contain new, strong protections for the state in whose fresh waters anadromous fish originate. Attempts to negotiate acceptable articles on highly migratory species, such as tuna, were not successful at this session. Efforts to reach a negotiated solution in this area, however, will continue.

There was little opposition to a 12-mile territorial sea (Ecuador's proposal for a 200-mile territorial sea was supported by only a handful of countries). Readily evident was a strong trend in favor of a regime of unimpeded transit passage in straits used for international navigation. In addition, there was widespread acceptance of freedom of navigation, overflight, and other uses related to navigation and communication, and freedom to lay submarine cables and pipelines in the 200-mile economic zone.

Delegates broadly supported the exclusive rights of the coastal states to the nonliving resources (principally petroleum and natural gas) in the economic zone. Coastal state rights to mineral resources of the continental margin where it extends beyond 200 miles, however, were more controversial. As a possible compromise between opposing views, the United States suggested the establishment of a precise and reasonable outer limit for the margin coupled with an obligation to share a modest percentage of the well-head value of petroleum and natural gas production with the international community. We anticipate that there will be further negotiations in the Evensen group to determine a precise method for defining the outer limit of the continental margin beyond 200 miles and on a precise formula for revenue sharing.

The Group of 77 developing countries, particularly those members who did not participate in the Evensen group, urged further strengthening of the rights of coastal states in the economic zone. The landlocked and geographically disadvantaged states were dissatisfied with the failure of the Evensen articles to afford them the legal right to participate in exploiting the natural resources of the economic zone on a basis of equality with coastal states.

Regarding protection of the marine environment, texts were completed in the official working groups on monitoring, environmental assessment, and land-based pollution. Texts were almost completed on ocean dumping and continental shelf pollution. Negotiations were conducted in the

Evensen group on vessel source pollution without reaching agreement. Nevertheless, a trend did emerge against coastal state standard setting for vessel-source pollution throughout the economic zone.

There was a continuation of the debate between those states that demand consent for all scientific research conducted in the economic zone and those, such as the United States, that support the right to conduct such research subject to the fulfillment of internationally agreed obligations. A new approach sponsored by the Soviet Union attracted considerable attention. It requires consent for resource-related research and compliance with internationally agreed obligations for nonresource related research.

In the dispute settlement working group, most states supported binding dispute settlement procedures in areas of national jurisdiction although a minority opposed or wished to limit drastically their applicability (e.g., to navigation and pollution issues). Questions remain with respect to the jurisdiction coastal states have over resources and the scope and type of mechanism to settle disputes. A compromise proposal permitting states to choose between three ways to resolve disputes—the International Court of Justice, arbitration, or a special Law of the Sea Tribunal—was acceptable to the vast majority of participants. However, some delegations considered that their choice should be compulsory in all cases, while others favored a functional approach—different types of settlement for different types of disputes.

It is now clear that the negotiation on the nature of the deep seabed regime and authority is the principal stumbling block to a comprehensive Law of the Sea treaty.

The basic problem is an ideological gap between those countries possessing the technological ability to develop deep seabed minerals and the developing countries which insist that an international authority directly and effectively control all deep seabed mining and associated activities, and ultimately become the exclusive operator on the deep seabed. This reflects the developing countries' interest in the world economic order with respect to access to and control over natural resources, particularly with respect to their price and rate of development.

The United States explored a number of approaches in an effort to be forthcoming with respect to developing country demands for participating in the exploitation system. We indicated our willingness to abandon the inclusion of detailed regulatory provisions in the treaty and to concentrate on basic conditions of exploitation.

With over 140 states participating in a conference affecting vital and complex economic, military, political, environmental, and scientific interests, we could easily characterize the results of the Geneva session as a considerable success. However, it is no longer sufficient to make progress, even substantial progress. If the goal—the adoption of a widely acceptable, comprehensive treaty—continues to elude us, many states will feel compelled to take matters into their own hands in protecting interests with which the existing law of the sea does not deal adequately or equitably.

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